

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* E. A. C. Becker, Minor.

UNPUBLISHED  
October 20, 2015

No. 326427  
Oakland Circuit Court  
Family Division  
LC No. 12-795470-NA

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Before: BORRELLO, P.J., and JANSEN and OWENS, JJ.

PER CURIAM.

Respondent-father appeals as of right a February 2, 2015, circuit court order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(a)(ii) and (g). For the reasons set forth in this opinion, we affirm.

In April 2012, the minor child was placed in foster care shortly after her birth. The child's mother was named as the only respondent because respondent-father had not yet established paternity. The court acquired jurisdiction over the minor child pursuant to an adjudication only with respect to the mother, but both parents participated in services. Two years later, petitioner filed a supplemental petition to terminate both parents' parental rights. Before the hearing was completed, our Supreme Court decided *In re Sanders*, 495 Mich 394; 852 NW2d 524 (2014), in which it held that a court may not terminate the parental rights of a parent who has not been adjudicated a respondent in the proceedings. Because there had not been any adjudication with respect to respondent-father, the trial court discontinued the proceedings against him. However, the trial court continued the proceedings with respect to the mother and terminated her parental rights in September 2014 and this Court affirmed that termination order.<sup>1</sup>

Petitioner filed a new petition with respect to respondent, and respondent entered pleas of no contest to both jurisdiction and the existence of statutory grounds for termination under MCL 712A.19b(3)(a)(ii) and (g). The court scheduled a hearing to determine whether termination of respondent's parental rights was in the minor child's best interests. Respondent father failed to appear for a scheduled psychological evaluation ordered by the court before the hearing, and also failed to appear for the best-interest hearing in January 2015. He was given an opportunity to

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<sup>1</sup> *In re Becker*, unpublished opinion per curiam of the Court of Appeals, issued May 14, 2015 (Docket No. 323834).

participate in the best-interest hearing by telephone, but declined that opportunity. Following the hearing, the trial court found that termination of respondent's parental rights was in the minor child's best interests because respondent had effectively abandoned the child by failing to attend any visitation after October 2013.

Respondent argues that the trial court clearly erred in finding that termination of his parental rights was in the child's best interests.

Once a statutory ground for termination is established, the trial court shall order termination of parental rights if it finds by a preponderance of the evidence that termination is in the child's best interests. MCL 712A.19b(5); *In re Brown/Kindle/Muhammad*, 305 Mich App 623, 637; 853 NW2d 459 (2014). When considering the child's best interests, "the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012). The trial court's best-interest decision is reviewed for clear error. *In re Brown/Kindle/Muhammad*, 305 Mich App at 637. "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011).

The trial court considered the child's foster care placement, her attachment to her foster parent, and her lack of bond with respondent. The trial court found that respondent's failure to visit the child after October 2013 was especially significant in demonstrating the lack of a bond between him and the child, and respondent's disinterest in the child's welfare. Specifically, the caseworker testified that respondent did not exercise his parenting time when he was afforded the opportunity, he was unemployed and unable to provide financially for the child, and he did not have an appropriate home for the child. Respondent's excuse that a personal protection order (PPO) that the mother had obtained against him prevented him from attending visitation is disingenuous, because (1) petitioner offered to accommodate separate visitation and to assist respondent with transportation expenses, and (2) respondent continued to live with the mother in flagrant violation of the PPO. Respondent's failure to establish his own housing and his continued cohabitation with the mother after her parental rights were terminated precluded him from providing the child with a safe home.

Additionally, respondent failed to appear for the best-interest hearing despite the trial court's offer to allow him to participate via telephone. Respondent also failed to appear for a scheduled psychological examination and failed to undergo alcohol abuse treatment even though he had a criminal history which indicated he abused alcohol. Respondent's failure to avail himself of services and failure to participate in visitation and court proceedings evinced disinterest and disregard for the child's wellbeing.

In sharp contrast to respondent's circumstances, the caseworker testified that the child's foster parent had consistently provided proper care since the child's placement in foster care a few days after her birth. The foster parent provided a safe and stable home, met all of the child's needs, and intended to adopt the child if respondent's parental rights were terminated.

Although respondent acted appropriately with the child during visitations early in the proceedings, he had not attended any visitation since October 2013. Moreover, respondent attended visitation only 40-percent of the time before discontinuing altogether, and he frequently left visits for smoking breaks. The foster parent testified that when respondent and the mother had unsupervised visitation, the child often returned smelling strongly of cigarette smoke. On three occasions, the child was brought to the hospital emergency room for a breathing treatment because the smoke exposure caused respiratory problems.

In finding that termination was in the child's best interests, the trial court remarked that respondent's failure to visit the child for a full year, when he was permitted to do so, was the "most stunning information" in the case. The trial court found that respondent had a history of substance abuse, domestic violence, and anger problems. Respondent father frequently showed poor judgment, such as when his behavior caused his and the mother's eviction from their apartment, and when he lived with the mother for several months in a tent. Considering all the circumstances, the trial court did not clearly err in finding that termination of respondent's parental rights was in the child's best interests. *In re Brown/Kindle/Muhammad*, 305 Mich App at 637.

Affirmed.

/s/ Stephen L. Borrello

/s/ Kathleen Jansen

/s/ Donald S. Owens